

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

QUADAFFI A. HOWELL,

Appellant.

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STATE OF WASHINGTON,

Respondent,

v.

JAMES E. REID,

Appellant.

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No. 39303-4-II  
(Linked with No. 38924-0-II)

UNPUBLISHED OPINION

No. 38924-0-II

Armstrong, J. — Quadaffi Howell appeals from the sentence imposed following his convictions for unlawful delivery of a controlled substance, unlawful possession of a controlled substance with intent to deliver, second degree assault, intimidating a witness, and drive-by shooting. He argues that the trial court erred in imposing multiple consecutive weapon enhancements for offenses that constitute parts of the same criminal conduct. Concluding that our Supreme Court has resolved his arguments against him, we affirm.<sup>1</sup>

The substantive facts are not relevant to Howell’s appeal.<sup>2</sup> Following a bench trial, the

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<sup>1</sup> A commissioner of this court initially considered Howell’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

<sup>2</sup> The substantive facts are set forth in Howell’s prior appeal. *State v. Howell*, 143 Wn. App. 1052, 2008 WL 929162 (April 8, 2008), *as amended on reconsideration* (June 3, 2008), *review denied*, 165 Wn.2d 1016 (2009).

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trial court convicted Howell of the crimes listed above. The court found he was armed with a firearm during the unlawful possession with intent to deliver, the commission of both assaults, and the intimidation of a witness. The court calculated Howell's offender score as five. Under cause number 05-1-02317-3, the court sentenced him to 60 months for unlawful delivery and 60 months for unlawful possession with intent to deliver, plus 36 months for a firearm enhancement, for a total of 96 months. Under cause number 05-1-02770-5, the court sentenced him to 22 months for each assault, plus 36 months for firearm enhancements, 48 months for intimidating a witness, plus 36 months for a firearm enhancement, and 41 months for drive-by shooting. The trial court made these base sentences concurrent with each other, but consecutive to the 96-month sentence imposed in 05-1-02317-3 and consecutive to the three firearm enhancements, for a total of 204 months.

Howell appealed. We affirmed his conviction but remanded for resentencing, holding that his convictions for intimidating a witness and one count of second degree assault constituted the same criminal conduct and should have counted as one point towards his offender score.

On resentencing, the court calculated Howell's offender score as four. It changed his base sentences for the second degree assaults from 22 to 15 months, for the intimidating from 48 to 41 months, and for the drive-by shooting from 48 to 36 months. But it still made these base sentences consecutive to the 96-month sentence imposed in 05-1-02317-3 and consecutive to the three firearm enhancements, which left the total sentence at 204 months.

Howell appeals again. First, he argues that former RCW 9.94A.533(3) (2003), the weapon enhancement statute, prohibits multiple consecutive enhancements for offenses that

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constitute the same criminal conduct. Thus, he contends that the trial court erred in imposing consecutive firearm enhancements for both the intimidating conviction and one of the assault convictions. But our Supreme Court recently rejected this argument, holding that the enhancement statute is unambiguous and “a sentencing court must impose multiple firearm enhancements where a defendant is convicted of multiple enhancement-eligible offenses that amount to the same criminal conduct under the sentencing statute.” *State v. Mandanas*, 168 Wn.2d 84, 90, 228 P.3d 13 (2010).

Second, Howell argues that imposition of multiple firearm enhancements violates his right against double jeopardy. But our Supreme Court recently reaffirmed that no double jeopardy violation occurs when the trial court imposes additional punishment based upon the defendant’s use of a firearm or other deadly weapon during a crime. *State v. Kelley*, 168 Wn.2d 72, 78, 226 P.3d 773 (2010) (citing *Missouri v. Hunter*, 459 U.S. 359, 366, 103 S. Ct. 673, 74 L. Ed. 2d 535 (1983), and *State v. Harris*, 102 Wn.2d 148, 158-60, 685 P.2d 584 (1984), *overruled on other grounds by State v. Brown*, 111 Wn.2d 124, 761 P.2d 588 (1988)).

The trial court did not err when resentencing Howell. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Armstrong, J.

We concur:

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Van Deren, J.

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Penoyar, C.J.